

Amendments to House Bill No. 410
1st Reading Copy

Requested by Representative Jeff Essmann

For the House Judiciary Committee

Prepared by Helen Thigpen
February 18, 2015 (5:48pm)

1. Title, page 1, line 8.

Following: "DISABILITIES"

Insert: "; CREATING THE OFFENSE OF EXPLOITATION OF AN
INCAPACITATED PERSON OR DEVELOPMENTALLY DISABLED PERSON;
PROVIDING PENALTIES; AND AMENDING SECTION 52-3-825, MCA"

2. Page 1, line 18.

Strike: "52-3-825"

Insert: "[section 2]"

3. Page 1, line 20.

Strike: "52-3-825"

Insert: "[section 2]"

4. Page 3, line 6.

Following: line 6

"NEW SECTION. Section 2. Exploitation of incapacitated person or person with developmental disability. (1) A person commits the offense of exploitation of an incapacitated person or a person with a development disability if the person:

(a) purposely or knowingly obtains or uses or attempts to obtain or use an incapacitated person's or developmentally disabled person's funds, assets, or property with the intent to temporarily or permanently deprive the incapacitated person or developmentally disabled person of the use, benefit, or possession of funds, assets, or property or to benefit someone other than the incapacitated person or developmentally disabled person; and

(b)(i) stands in a position of trust or confidence with the incapacitated person or developmentally disabled person; or

(ii) has a business relationship with the incapacitated person or developmentally disabled person.

(2) A person commits the offense of exploitation of an incapacitated person or a person with a developmental disability if the person:

(a) purposely or knowingly obtains personal identifying information of another person and uses that information for any unlawful purpose, including to obtain or attempt to obtain credit, goods, services, financial information, or medical information in the name of the other person without the consent

of the other person; and

(b)(i) stands in a position of trust or confidence with the incapacitated person or developmentally disabled person; or

(ii) has a business relationship with the incapacitated person or developmentally disabled person.

(3) A person convicted of the offense of exploitation of an incapacitated person or a person with a developmental disability shall be fined an amount not to exceed \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(4) As used in this section:

(a) "developmental disability" has the meaning provided in 53-20-102; and

(b) "incapacitated person" has the meaning provided in 72-5-101.

Insert: "Section 3. Section 52-3-825, MCA, is amended to read:

"52-3-825. Penalties. (1) A person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) (a) A person who purposely or knowingly abuses, sexually abuses, or neglects an older person or a person with a developmental disability is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to exceed \$10,000, or both.

(b) (i) A person who negligently abuses an older person or a person with a developmental disability is guilty of a misdemeanor and upon a first conviction shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(ii) Upon a second or subsequent conviction of the conduct described in subsection (2)(b)(i), the person is guilty of a felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to exceed \$10,000, or both.

(c) A person with a developmental disability may not be charged under subsection (2)(a) or (2)(b).

(3) (a) A person convicted of purposely or knowingly exploiting an older person ~~or a person with a developmental disability~~ in a case involving money, assets, or property in an amount of \$1,000 or less in value shall be fined an amount not more than \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of purposely or knowingly exploiting an older person ~~or a person with a developmental disability~~ in a case involving money, assets, or property in an amount of more than \$1,000 but less than \$25,000 in value shall be fined an amount not more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. A person convicted of purposely or knowingly exploiting an older person ~~or a person with a developmental disability~~ in a case involving money, assets, or property in an amount of \$25,000 or more in value shall be fined an amount not more than \$50,000

or be imprisoned in a state prison for a term of not less than 1 year and not more than 10 years, or both.

(b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value involved."

{Internal References to 52-3-825: None.}"

Renumber: subsequent sections

5. Page 3, line 8.

Following: "instruction."

Insert: "(1)"

6. Page 3, line 9.

Following: line 9

Insert: "(2) [Section 2] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [section 2].

- END -